IN THE SUPREME COURT OF FLORIDA

ENOCH D. HALL,	)	
	)	
Appellant,	)	
	)	
vs.	)	CASE NO. SC10-182
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

APPEAL FROM THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

JAMES S. PURDY
PUBLIC DEFENDER
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TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

TABLE OF CITATIONS

TABLE OF CITATIONS (con't)

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PRELIMINARY STATEMENT

The record on appeal is comprised of thirty-five consecutively numbered volumes. In this brief, the symbol "R" will designate page numbers of the pleadings in the record on appeal, and the symbol "T" will designate the pages of the transcripts (numbered separately from the pleadings.) Counsel will refer to the record on appeal using either "R" and "T"; followed by an Arabic number referring to the appropriate pages; followed by "Vol." followed by the appropriate Arabic number to designate the volume number, as denoted by the court clerk, and not the transcript volume numbers given by the court reporter. The symbol "IB" will designate the Initial Brief filed by the Appellant and the symbol "AB" will designate the Answer Brief filed by the Appellee.

SUMMARY OF ARGUMENT

Point I. The trial court erred in denying the motion to suppress Mr. Hall's statements to FDLE agents. The trial court used the wrong legal standard in considering Mr. Hall's motion to suppress. The court considered that the initial confession may have been coerced by violence, but failed to examine the totality of the circumstances to determine whether the taint had dissipated before the second confession.

Point II. The trial court erred in permitting the medical examiner to testify beyond his area of expertise as to the sequence that the stab wounds were inflicted upon the victim. The medical examiner's testimony was without scientific basis and was admitted without requiring the State to establish a foundation.

Point III. The trial court erred in allowing highly prejudicial testimony in the penalty phase to establish the prior violent felony aggravator. The testimony became a feature of the feature of the penalty phase denying Appellant his right to due process.

Point IV. The trial court erred in permitting the State to argue at the penalty phase a non-statutory aggravator.

Point V. The trial court erred in making its findings of fact in support of the

death sentence where the findings were insufficient, where the court failed to consider appropriate mitigating factors, where the court erroneously found an inappropriate aggravating circumstances, and where a comparison to other capital cases reveals that the only appropriate sentence in the instant case is a life sentence.

Point IV. Florida's death penalty procedure violates the Sixth and Fourteenth Amendments under Ring v. Arizona, 536 U.S. 584 (2002).

POINT I

THE TRIAL COURT FAILED TO APPLY THE PROPER LEGAL STANDARD IN DECIDING THE APPELLANT'S MOTION TO SUPPRESS, DENYING HIS RIGHT TO DUE PROCESS.

The Appellant writes to clarify the issue argued in the initial brief. In the Answer Brief, the Appellee characterizes Appellant's argument that the trial court's denial of the motion to suppress as mere "dissatisfaction with the result." (AB55) The Appellee also asserts that the trial court's ruling on the motion to suppress should be upheld as it was based on findings of fact that are supported by the evidence and are not clearly erroneous. (AB52-55) The issue that was actually raised in the Initial Brief, however, was whether the trial court properly applied the correct legal standard to determine whether the Appellant's confessions were the product of coercion and the proper standard of review is *de novo*. Nelson v. State, 850 So.2d 514, 521 (Fla. 2003) ("[A]ppellate courts must independently review mixed questions of law and fact that ultimately determine constitutional issues arising in the context of the Fourth and Fifth Amendment and, by extension, Article I, Section 9 of the Florida Constitution.")

In the Initial Brief, the Appellant argued that, under Leon v. Wainwright, 734 F.2d 770,772 (11th Cir. 1984), the test for determining whether a later confession is tainted by an earlier coerced confession is whether, given the totality of the circumstances there is a "sufficiently isolating break in the stream of events." (IB 45-49) In denying the motion to suppress, the trial court cited to *Leo**Amendment XIV, United States ConstitutionPerez v. State*

919 So.2d 347 (Fla. 2005)*Douglas v. State*

878 So.2d 1246 (Fla. 2004) Douglas v. State, 878 So.2d 1246 (Fla. 2004) is similar. (AB57). The Appellant agrees that *Douglas* is similar in that it is within the scope of a medical examiner's expertise to determine that some injuries a victim suffered are defensive injuries and most likely occurred first, but that based on a decedent's body alone, a medical examiner is unable to determine the order of injuries. In *Douglas*, the victim died from blunt head trauma and the medical examiner, based on defensive wounds, opined that most likely the victim was not struck unconscious from behind, but could not determine the sequence of injuries inflicted on the victim:

> Although Dr. Areford could not determine the sequence of the injuries inflicted on [the victim] while she was alive, he opined that it was unlikely that [the victim] was struck from behind, fell to the ground and was hit a number of times while unconscious. Dr. Areford explained that such a scenario was inconsistent with the defensive type injuries found on [the victim's] hands and forearm as well as with the fact that there were injuries to all sides of her head, which indicated that she was rolling from side to side. *Douglas*, 878 So.2d at 1251.

In the instant case, not only did Dr. Bulic determine that the victim had defensive injuries, but also testified that the victim was stabbed first in the abdomen and then in the back. Since the stab wounds to the back would have caused Officer Fitzgerald to quickly lapse into unconsciousness, the trial court's error in admitting testimony beyond the scope of the witness's expertise provides misleading evidence that this was first degree murder, rather than second degree murder. The error is compounded by the fact that this improper opinion testimony was also used by the jury and the court in determining the sentence of death. The admission of Dr. Bulic's testimony as to the order of stab wounds violated the Appellant's right to a fair trial and requires that this case be remanded for new guilt and penalty phase trials. *Amends. VI, XIV, U.S. Const.; Art. I, Sec.9, Amendment VIII, United States Constitution, U.S. Const.; Art. I, Sec.2, 9,Article I, Section 17, Florida ConstitutionArticle I, Section 21, Florida ConstitutionDuncan v. State*

619 So.2d 279 (Fla. 1993)Duncan v. State, 619 So.2d 279 (Fla. 1993), Rhodes v. State, 547 So.2d 1201 (Fla. 1989), and *an*, this Court found that, although the prejudicial effect of the admission of a gruesome photograph of the victim of a prior violent felony clearly outweighed its probative value, the error was harmless, because:

> Once admitted, no further reference was made to the photograph. It was not urged as a basis for a death recommendation; nor was it otherwise made a focal point of the proceedings. Moreover, the jury was well aware of the fact that Duncan had previously been convicted of the brutal attack and murder of another.

*Du**Parker v. State***

456 So.2d 436 (Fla. 1984) *rker*, 456 So.2d 436-444.

The Appellee argued in the alternative that any error would be harmless beyond a reasonable doubt, because the jury would still have recommended that the Appellant be sentenced to death . (AB65-66) The Appellant replies that the error probably had the reverse effect of strongly encouraging the jury to recommend a death sentence, since a life sentence for Officer Fitzgerald's murder would not serve to increase his punishment.

POINT V

THE APPELLANT'S DEATH SENTENCE WAS IMPERMISSIBLY IMPOSED, RENDERING THE DEATH SENTENCE UNCONSTITUTIONAL UNDER THE FEDERAL AND FLORIDA CONSTITUTIONS.

The Appellant relies on the arguments raised in the Initial Brief.

POINT VI

FLORIDA'S DEATH SENTENCING SCHEME IS UNCONSTITUTIONAL UNDER THE SIXTH AMENDMENT PURSUANT TO RING V. ARIZONA.

The Appellant relies on the arguments raised in the Initial Brief.

CONCLUSION

BASED UPON the cases, authorities and policies cited herein, the Appellant respectfully requests that this Court reverse his judgment and sentence and, as to Point I and Point II, remand for a new trial; as to Point III, IV, remand for a new penalty phase; and as to Point V and Point VI, vacate the death sentence and remand for the imposition of a life sentence.

Respectfully submitted,

_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Pamela Jo Bondi, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, Florida 32118, and mailed to Enoch Hall, DOC #214353, Florida State Prison, 7819 N.W. 228th Street, Raiford, Florida 32026-1000, on this 29th day of August, 2011.

_____

MEGHAN ANN COLLINS

ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this brief is proportionally spaced Times New Roman, 14pt.

ASSISTANT PUBLIC DEFENDER